BOOK REVIEWS

SAFEGUARDS OF LIBERTY, by W. B. Swaney. (New York and London: Oxford University Press, 1920.)

The author has given the above title to a small volume which has as its central theme the social and political philosophy of Thomas Jefferson. Mr. Swaney is a member of the Chattanooga Bar, Instructor in Contracts and Private Corporations in the Chattanooga College of Law, and an ex-President of the Bar Association of Tennessee.

The object of the treatise "is to present in the briefest manner possible, a synopsis of this masterly and epoch-making document (the Declaration of Independence); to endeavor to show the far-reaching effect of the great truths of constitutional law constituting the framework of this charter of our liberties; and in some measure to do justice to its author and his contemporaries".[1]

Mr. Swaney believes that the second paragraph of the celebrated document "fixes the basis of our government on the only true foundation of genuinely democratic institutions—to-wit: 'that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.' "[2]

The greater part of the first chapter of this work is taken up with extracts from the Declaration of Independence with comments thereon, and with citations from other Jeffersonian documents which emphasize the opposition of Jefferson to slavery.

In "A Summary View of the Rights of British America" Jefferson stated in 1774 that:

"The abolition of domestic slavery is the great object and desire of those Colonies where it was unhappily introduced in their infant state."

Some time later when Jefferson was overruled in his effort to have inserted in the Constitution of Virginia of 1776 a clause prohibiting the importation of slaves and a provision for their emancipation after 1800, he recorded the following significant prophecy:

"But it was found that the public mind would not yet bear that proposition, nor will it bear it even at this date. Yet the day is not distant when it must bear and adopt it, or worse will follow."[3]

Jefferson continued his fight against the extension of slavery. In a draft of a bill for the government of the Northwestern Territory in 1784, he proposed a clause prohibiting slavery after 1800. The passage of this clause was defeated by a single vote and the incident evoked the following comment from its sponsor:

"The vote of a single individual of the State which was divided, or one of those which were of the negative, would have prevented this abominable crime from spreading itself over the new country."[4]

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[1] p. 5. [2] p. 7. [3] p. 42.
[4] p. 44.

When the ordinance for the government of the Northwestern Territory was finally passed by Congress in 1787 it contained a clause prohibiting slavery in the form which Jefferson had originally proposed.[5]

Two succeeding chapters deal respectively with "Thomas Jefferson as the Builder of a State" and "Jefferson's Contributions to the Nation and to the World". They include an entertaining biographical sketch of Jefferson and give the proper emphasis to his great constructive work as a legislator in the State of Virginia. Jefferson himself, of course, anticipated all of his commentators in singling out the great enduring achievements of his career. Yet of scarcely less importance was his classic formulation of the statute for the repeal of the law of entails and the abrogation of the right of primogeniture in Virginia. And apart from Jefferson's contributions as a social and political philosopher and as a legislator, Mr. Swaney has appropriately designated the Louisiana Purchase as "the greatest single achievement" of Jefferson's presidential tenure. The acquisition of this wide expanse of territory recorded the comprehensive vision of Jefferson in practical statesmanship and early saved America from the political partition which has been the bane of the continent of Europe.

The concluding chapter on "Growth and Development" cites the manner in which various conceptions of individual liberty have influenced English and American institutions and is replete with quotations from diverse and often unrelated sources. The wide field which the author has here attempted to cover has unfortunately detracted from the continuity of his theme and from the effectiveness of his presentation. The topics introduced, however, are suggestive and indicate the wide acquaintance of the author with literature of this nature.

It would have been well in a study of this sort to have developed more fully than the author has done the influences which colored Jefferson's thinking and which made of him the great American exponent of popular government of his era. Jefferson was undoubtedly familiar with all the great charters of English liberty written prior to the Declaration of Independence. Yet even more, he had a distinct philosophical background for his theories of government. In these philosophical ideas, Jefferson was, in the main, a follower of John Locke, the great defender of English revolutionary movements of the seventeenth century. His admiration of the teachings of Locke moved Jefferson to prescribe Locke's Treatise on Civil Government as a requisite text-book in the University of Virginia in order to perpetuate the teachings which had been a source of such vital inspiration to the eminent Father of the institution.

Jefferson was at one with Locke in believing that government was instituted, not to create rights, but to secure already existing, or "natural rights". Upon entering political society, man did not relinquish his existing rights, but, on the contrary, these rights were rendered more secure. It was the province of government, therefore, to declare and maintain our rights but not to detract from them. What, however, was the content of these natural rights? Upon this problem the natural

[5] BANCROFT, Vol. II, pp. 115-116. Quoted by Mr. Swaney, p. 97.

rights philosophers were themselves not always in accord. To Jefferson certain fundamental considerations were clear: it is not the right of one man to interfere with the rights of another; no man has a natural right to be a judge in his own cause; and every man owes certain obligations to the necessities of society. It is for the adjustment of these rights that government and the rule of law are instituted among men.

When government ceases to fulfil these primary functions and becomes oppressive, Jefferson recognizes two alternatives: a periodic revision of the powers delegated by the people to the government; or, if this fails, revolution. The American Colonists had repeatedly sought to utilize the less violent method for the recovery of their liberties. Orderly petitions for the redress of their grievances had been ignored by the government which had become an instrument of oppression. When the course of revolution was decided upon, the spokesman of the Colonists wrote into the Declaration of Independence the principles which had been invoked throughout the struggle for political and civil liberty in England. These principles were, moreover, in accord with the teachings of Locke, the great English apologist of revolution, with which Jefferson and many of his countrymen were indoctrinated. Revolt, however, against constituted authority was a course upon which men were not to enter lightly. Thus the American charter was a document of justification no less than a declaration of principles. "A decent respect for the opinions of mankind" impelled Jefferson to recite with impressive conviction a list of the grievances which moved the Colonists to dissolve by force the governmental compact with their rulers.

It has sometimes been asserted that the political philosophy of Jefferson is loosely constructed and conducive to revolutionary sentiments. Writing in an age when forcible resistance to existing governments was utilized both in America and in France, it was but natural that Jefferson's words should at times be charged with a valiant defence of the individual against oppression. Yet he clearly realized the essential illegality of revolution and held no brief for it save against excessive tyranny. The orderly processes of law were, he maintained, the proper medium for the regulation of government. To enhance the effectiveness of this method, he proposed his somewhat novel scheme for constitutional conventions to revise the organic law of a state every nineteen years in order that government might ever be kept abreast of the sentiments of a people.

On the whole Mr. Swaney has contributed a meritorious work. He is undoubtedly an appreciative and informed student of Jefferson. The emphatic fashion in which he brings to the front once more the intense faith of Jefferson in popular government and the constant solicitude of the great Virginian for a wide sphere of individual initiative is especially acceptable at the present time. The author is right, furthermore, in emphasizing the importance of students of government and law acquainting themselves with the great historic documents which record the triumphs of popular government over the arbitrary rule of individuals or classes. It is wholesome to have revived a study of the rights which the pioneers in the struggle for freedom considered to be

"inherent" in the individual. The collectivist spirit of the nineteenth century has tended to make of government more and more an organ primarily of the social will with a corresponding curtailment of the sphere of individual freedom. The reconciliation of government and liberty is a problem which demands constant scrutiny and its adjustment becomes ever more difficult with the increasing complexity of society.

The volume contains a brief introduction by William G. McAdoo.

BRUCE WILLIAMS.

FEDERAL CRIMINAL LAW AND PROCEDURE, by Elijah N. Zoline. (Boston: Little, Brown and Company, 1921, Vol. I, pp. CXXXI, 505, Vol. II, XI, 730, Vol. III, VII, 783.)

This exhaustive work marks the first step into a new field. It is just what its title states—a book dealing solely with the Federal criminal law and procedure. The limit of its scope is induced by the now definitely settled principle that the rules of evidence and the practice and procedure prevailing in the State Courts where the Federal tribunal is situated have no controlling application in the trial of the criminal cases in the United States Courts.

It is not a text-book on criminal law, nor is it a text-book on Federal procedure; but it is, as its author acknowledges he believes it to be, a "complete, logical, concise and comprehensive up-to-date work, dealing with every phase of Federal criminal substantive and adjective law". The distribution into the three volumes, each of which is entirely separate both as to the subject matter and the mechanical compilation, is gratifyingly logical.

The first volume contains almost exclusively the author's real contribution to the *corpus juris* in text-book form; for here he has assembled the entire body of the Federal law relating to criminal procedure, including the rules of evidence applicable in criminal cases in the Federal Courts. This volume is not solely, like so many modern text-books, a mere digest of the case law in exposition of the common law or in construction of statutes; but it contains many valuable suggestions as to the proper steps to take in the trial of a case to preserve to the defendant his constitutional rights in the trial court and insure consideration there by means of a writ of error to the Supreme Court of the United States or the United States Circuit Court of Appeals.

The second volume deals exclusively with the Federal substantive criminal law. It contains the entire Federal Criminal Code with all the amendments thereto, arranged so systematically that one may with some facility obtain a really intelligible and comprehensive idea of the scope and magnitude of Federal legislation. Under each penal section the author makes editorial comments in which there is incorporated all important decisions dealing not only with the construction and interpretation of the particular sections, but in many instances calling attention to a rule of evidence or of pleading and practice governing the specific section or act under consideration.